



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02; RTID 0648-XB640]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 19.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the 28.9-mt General category December 2022 subquota to the January through March 2022 subquota period. The adjusted General category January through March 2022 subquota is 49 mt. NMFS reminds General category participants that when the fishery reopens January 1, 2022, the daily retention limit will be one large medium or giant bluefin tuna (i.e., measuring 73 inches (185 cm) curved fork length or greater) per vessel per day/trip. This action is intended to provide further opportunities for General category fishermen to participate in the January through March General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective January 1, 2022, through March 31, 2022.

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SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General category quota is 555.7 mt. The General category baseline subquota for the January through March time-period is 29.5 mt.

Transfer of 19.5 mt from the December 2022 Subquota to the January through March 2022 Subquota

Under § 635.27(a)(1)(ii), NMFS has the authority to transfer subquota from one time period to another time period through inseason action after considering determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status.

Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including in December 2021 and during the winter fishery in the last several years) and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Without a quota transfer from the December 2022 subquota period, the quota available for the January through March period would be 29.5 mt and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT remain available in the areas where General category permitted vessels operate. Transferring 19.5 mt of the 28.9-mt quota available for the December 2022 subquota period would result in 49 mt ($29.5 \text{ mt} + 19.5 \text{ mt} = 49 \text{ mt}$) being available for the January through March 2022 subquota period. This quota transfer would provide limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery at both the beginning and end of the calendar year.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS may adjust each period's subquota based on overharvest or underharvest in the prior period and may transfer subquota from one time period to another time period. By allowing for such quota adjustments and transfers, NMFS anticipates that the General category quota would be used before the end of the fishing year. For 2021, NMFS transferred 19.5 mt of quota from the December 2021 subquota period to the January through March 2021 subquota period, resulting in an adjusted subquota of 49 mt for the January through March 2021

period and an adjusted subquota of 9.4 mt for the December 2021 period (85 FR 83832, December 23, 2020). NMFS also made a transfer of 26 mt from the Reserve to the General category effective February 8, 2021, resulting in an adjusted subquota of 75 mt for the January through March 2021 period (86 FR 8717, February 9, 2021), and closed the General category fishery for the January through March subquota period effective February 27, 2021 (86 FR 12291).

NMFS also considered the estimated amounts by which quotas for other gear categories of the BFT fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2022 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2022 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of transferrable quota and other management objectives, while avoiding quota exceedance. NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 17-06 and maintained in Recommendation 20-06), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. While not yet implemented, NMFS anticipates this transfer would also be consistent with ICCAT Recommendation 21-07. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This

quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and its amendments, including to achieve optimum yield on a continuing basis and to allow all permit categories a reasonable opportunity to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunities equitably across all time-periods.

NMFS also anticipates that some underharvest of the 2021 adjusted U.S. BFT quota will be carried forward to 2022 and placed in the Reserve category, in accordance with the regulations. This, in addition to the fact that NMFS may adjust each period's subquota based on overharvest or underharvest in the prior period, as well as NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2022 for December fishery participants, even with the quota transfer. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2021. NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2022, through active inseason management actions such as retention limit adjustments and/or the timing of quota transfers, as practicable.

Given these considerations, NMFS is transferring 19.5 mt of the available 28.9-mt General category quota allocated for the December 2022 period to the January through March 2022 period, resulting in an adjusted January through March 2022 subquota of 49 mt, and an adjusted December 2022 subquota of 9.4 mt. The General category fishery will remain open until March 31, 2022, or until the adjusted General category quota is reached, whichever comes first.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or the end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8). However, at this time, NMFS is maintaining the default daily retention limit of one large medium or giant BFT per vessel per day/trip (§ 635.23(a)(2)) for the January through March 2022 General category fishery. Regardless of the duration of a fishing trip, no more than a single day's retention limit may be possessed, retained, or landed. For example (and specific to the limit that will apply beginning January 1, 2022), whether a vessel fishing under the General category limit takes a 2-day trip or makes two trips in 1 day, the daily limit of one fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments (*e.g.*, quota adjustment, daily retention limit

adjustment, or closure) are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access hmspermits.noaa.gov, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and its amendments provide for inseason adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice, an opportunity for public comment, and a delay in effective date regarding this quota transfer for the January through March 2022 subquota period is impracticable and contrary to the public interest. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, including the recently available December 2021 data, in deciding to transfer a portion of the December 2022 subquota to the January through March 2022 subquota. If NMFS was to offer a public comment period or delay in effective date now, after having appropriately considered that data, it could preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. This action does not raise conservation and management concerns. Transferring quota within the General category does not affect the overall U.S. BFT quota, and the

adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 20, 2021.

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